

**FILED**

**JUN 20 2011**

**STATE OF UTAH  
DIVISION OF OIL, GAS AND MINING**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

<p><u>PERMITTEE</u></p> <p>David Hibbs, President Genwal Resources, Inc. P.O. Box 910 Price, Utah 84520-0910</p> <p>PERMIT NUMBER <u>C/015/0032</u> DIVISION NUMBER <u>DO10A</u></p>	<p>AMENDED DIVISION ORDER &amp; FINDINGS OF PERMIT DEFICIENCY/INADEQUATE BONDING</p>
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PURSUANT to R645-303-212 and R645-301-830.410, by Stipulation with Genwal Resources, Inc. dated June 15, 2011 and by an Order of the Board of Oil, Gas and Mining ("Board"), the Division amends the Division Order 10A ("DO-10A") which is currently subject to appeal as follows:

1. DO-10A was originally issued on August 17, 2010. Generally, DO-10A required Genwal to post a bond to cover the treatment of unanticipated pollution discharges from the Crandall Canyon Mine. DO-10A was appealed to the Board by Genwal in a Request for Agency Action filed September 15, 2010, that challenged the Division's authority to require such a bond. The Division filed a Response and the parties entered into a Stipulation filed October 21, 2010 ("Scheduling Stipulation"). The Scheduling Stipulation extended the required dates for compliance stated in DO-10A's until the completion of hearings and a decision by the Board on the matter.

2. Genwal has complied with some of the obligations set out in DO-10A or the deadlines for compliance have been extended by a separate agreement. This Amended DO-10A acknowledges that such changes have been made, but will not set forth the details of those changes and will rely on the separate agreements between the Division and Genwal regarding those deadlines and requirements.

3. It is the sole purpose and intent of this Amended DO-10A to provide additional options for compliance with requirement III of DO-10A as issued on August 17, 2010. Except for the additional options for compliance provided herein, this Amended DO-10A does not modify any other provisions, original findings, or requirements except for those noted in Paragraph 1 which are incorporated herein by reference and reaffirmed.

4. Requirement III of DO-10A originally required Genwal take the following action:

**III. By October 11, 2010**

Provide a bond *or* establish a trust fund or other funding instrument acceptable to the Division that will yield a yearly payment sufficient to cover mine-water

treatment costs in perpetuity. The Division has estimated the yearly operating cost for the “operational” treatment system to be \$325,000. The bond or yearly payment amount will be adjusted when Genwal Resources, Inc. supplies more detailed cost information for the “operational” treatment system or based on the design, and cost estimate for a postmining (reclamation phase) treatment system.

Any proposed bond or trust fund amount will be subject to approval of the Division pursuant to R645-301-830. The Division will provide notice and opportunity for informal conference in accordance with R645-301-830.420.

5. The Division hereby modifies DO-10A to provide an alternative method for satisfying Requirement III by requiring that Genwal enter into a written agreement with the Division, guaranteed by Murray Energy, that includes the following provisions:

**A. ANNUAL MONITORING:** Pre-treatment water pollution levels will be monitored and reported bimonthly according to a reporting protocol agreed upon by the Division and UEI. The parties will meet no less than annually to evaluate the reported data.

**B. INTERIM SURETY:**

- a. Within 30 days from the execution of this Agreement, UEI will provide the Division with funds for an INTERIM SURETY adequate to cover five (5) years of operating expenses at the actual annual costs to operate the temporary operating facility.
- b. The Division will initially establish the operating costs based on the Division’s independent calculations. UEI may submit supplemental operating costs and the Division may adjust the amount of the INTERIM SURETY if the Division deems it appropriate.
- c. This INTERIM SURETY will be assessed annually. If operating costs of the temporary facility change significantly the INTERIM SURETY will be adjusted accordingly.
- d. At a minimum the initial 5 year INTERIM SURETY will remain in place at all times during the life of the contract until the INTERIM SURETY is consolidated with the LONG-TERM TREATMENT SURETY under paragraph E(b) or released by the Division under paragraph G.

**C. INITIAL ELIMINATION PERIOD:**

- a. If at the end of year three of the agreement, the pre-treatment iron discharges naturally dissipate to below water quality standards, aside from annual adjustments addressed in paragraph B, UEI will not be required to provide additional funds or any other water treatment surety besides the

INTERIM SURETY until the INTERIM SURETY is released according to paragraph G.

- b. If the iron discharges are not below water quality standards by the beginning of year four (4), UEI will be required to provide an additional year of operating expenses to be added to the INTERIM SURETY resulting in the Division holding six years of operating expenses.
- c. If the iron discharges are not below water quality standards by the beginning of year five (5), UEI will be required to provide an additional year of operating expenses to be added to the INTERIM SURETY resulting in the Division holding seven years of operating expenses.

**D. LONG-TERM TREATMENT FACILITY DESIGN, CAPITAL COSTS, AND ESTIMATED OPERATING EXPENSES:**

- a. By the beginning of year five (5) of the contract, UEI will be required to submit to the Division final plans for a permanent water treatment facility.
- b. At this time UEI will provide a cost estimate for the capital costs, including construction costs, of building the permanent facility and the estimated annual operating costs of the facility.
- c. All final plans and estimates will be subject to the approval by the Division.

**E. LONG-TERM TREATMENT SURETY (YEARS 6-10):**

- a. The Division will determine an amount for a LONG TERM TREATMENT SURETY consisting of the sum of the principal necessary to annually accrue the annual estimated operating costs of the long-term treatment facility; the capital cost of the long-term treatment facility and equipment; plus 15% surcharge of the capital costs of the long term facility. .
- b. At the beginning of year six (6) the Division will transfer any and all funds held as an INTERIM SURETY into the LONG-TERM TREATMENT SURETY account.
- c. At the beginning of year six (6) the Division will calculate the difference between the INTERIM SURETY held by the Division and the LONG-TERM TREATMENT SURETY. For years 6-10 UEI will pay 1/5 of this difference each year. At the end of year ten (10) the Division will have adequate funds for the capital costs of the facility, administrative costs to build the building, and an interest bearing account adequate to fund the annual operating expenses of the permanent treatment facility.

- d. If UEI at any time prior to year ten (10) satisfactory completes construction of the long-term treatment facility according to the approved plans, the amount of the LONG-TERM TREATMENT SURETY will be reduced by the amount of the capitol costs and the 15% surcharge.

**F. OPTION TO ADJUST BOND PAYMENTS IF DISCHARGES DIMINISH:**

- a. If based on a review of pre-treatment water quality data, to occur at least annually, the data supports the conclusion that the iron discharges may reasonably be expected to naturally dissipate and comply with water quality standards within two years, then UEI can request a temporary abatement of the required bond payment for that year. If the Division agrees that the data supports the finding that iron discharges will decrease and comply with water quality standards in two years, the Division and UEI will agree on water quality standard thresholds and deadlines that the discharges data must meet to indicate the iron discharges are on track to be eliminated within two years.
- b. If at the end of the first monitoring year, the iron discharges do not dissipate as anticipated, UEI will resume making the payment to the surety account that would have been paid at the end of the prior year and the schedule for making the annual payment schedule will be extended by one year to account for the period of abatement.
- c. If the pre-treatment iron levels fail to reach the established water quality threshold at the end of year two, then the bond payments will resume and the required payment schedule will be adjusted to allow for the period of abatement.
- d. If the discharges are below the water quality standards at the end of year two, additional bond payments will cease as long as the discharges stay below the water quality standard. Ultimate release of the surety will be governed by paragraph G.
- e. If the pre-treatment iron levels fail to remain below the water quality threshold during the two year compliance period required for bond release under paragraph G, then the payments will resume and the required payment schedule will be adjusted to allow for the period of abatement.

**G. RELEASE OF SURETY:** If at any time during the initial 10 years of the contract or thereafter, the iron discharges remain below the water quality standards for two years or more, any surety held by the Division will be terminated and any and all funds released to UEI.

**H. TREATMENT RESPONSIBILITIES:** At all times during the life of this contract, UEI shall be responsible to continue to treat the discharged water, to assume all costs of operation, maintain the treatment system, and comply with water quality standards

**I. ENFORCEMENT:** If UEI fails to make any payments or reimbursements of funds or fails to make the annual payments required herein, the Division may without further recourse make a demand from Murray Energy. The failure to make any payment required by the contract by UEI or Murray Energy shall constitute a violation of the UEI permit and the requirements of SMRCA. The Division may use the enforcement provisions of the Utah Coal Mining and Reclamation Act including issuance of NOV, CO's and FTACOs for failure to comply with the contract.

6. The use of the alternative Agreement set forth in this Amended DO-10A shall be subject to a finding by the Board that this option satisfies the requirements of the Act.

Dated this 20<sup>th</sup> day of June, 2011



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Division of Oil, Gas and Mining  
Dana Dean, Associate Director